

# Senate Study Bill 1181

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
HUMAN RESOURCES BILL  
BY CHAIRPERSON RAGAN)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the Iowa Indian child welfare Act.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
3 TLSB 2157XC 83  
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1 1 Section 1. Section 232B.3, subsection 6, Code 2009, is  
1 2 amended to read as follows:  
1 3 6. "Indian child" or "child" means an unmarried Indian  
1 4 person who is under eighteen years of age ~~or a child who is~~  
~~1 5 under eighteen years of age that an Indian tribe identifies as~~  
~~1 6 a child of the tribe's community.~~  
1 7 Sec. 2. Section 232B.9, subsections 1, 2, 5, and 6, Code  
1 8 2009, are amended to read as follows:  
1 9 1. In any adoptive or other permanent placement of an  
1 10 Indian child, in the absence of good cause to the contrary,  
1 11 preference shall be given to a placement with one of the  
1 12 following, in descending priority order:  
1 13 a. A member of the Indian child's family.  
1 14 b. Other members of the Indian child's tribe.  
1 15 c. Another Indian family.  
1 16 d. A non-Indian family approved by the Indian child's  
1 17 tribe.  
1 18 e. A non-Indian family that is committed to enabling the  
1 19 child to have extended family visitation and participation in  
1 20 the cultural and ceremonial events of the child's tribe.  
1 21 2. An emergency removal, foster care, or preadoptive  
1 22 placement of an Indian child shall be in the least restrictive  
1 23 setting which most approximates a family situation and in  
1 24 which the child's special needs, if any, may be met. The  
1 25 child shall also be placed within reasonable proximity to the  
1 26 child's home, taking into account any special needs of the  
1 27 child. In any foster care or preadoptive placement, in the  
~~1 28 absence of good cause to the contrary,~~ a preference shall be  
1 29 given to the child's placement with one of the following, in  
1 30 descending priority order:  
1 31 a. A member of the child's extended family.  
1 32 b. A foster home licensed, approved, or specified by the  
1 33 child's tribe.  
1 34 c. An Indian foster home licensed or approved by an  
1 35 authorized non-Indian licensing authority.  
2 1 d. A child foster care agency approved by an Indian tribe  
2 2 or operated by an Indian organization which has a program  
2 3 suitable to meet the Indian child's needs.  
2 4 e. A non-Indian child foster care agency approved by the  
2 5 child's tribe.  
2 6 f. A non-Indian family committed to enabling the child to  
2 7 have extended family visitation and participation in the  
2 8 cultural and ceremonial events of the child's tribe.  
2 9 5. Notwithstanding the placement preferences listed in  
2 10 subsections 1 and 2, if a different order of placement  
2 11 preference is established by the child's tribe or in a binding  
2 12 agreement between the child's tribe and the state entered into  
2 13 pursuant to section 232B.11, in the absence of good cause to  
~~2 14 the contrary,~~ the court or agency effecting the placement  
2 15 shall follow the order of preference established by the tribe  
2 16 or in the agreement.  
2 17 6. As appropriate, the placement preference of the Indian  
2 18 child or parent shall be considered. In applying the  
2 19 preferences, a consenting parent's request for anonymity shall

2 20 also be given weight by the court or agency effecting the  
2 21 placement. ~~Unless there is clear and convincing evidence that~~  
~~2 22 placement within the order of preference applicable under~~  
~~2 23 subsection 1, 2, or 5 would be harmful to the Indian child,~~  
~~2 24 consideration of the preference of the Indian child or parent~~  
~~2 25 or a parent's request for anonymity shall not be a basis for~~  
~~2 26 placing an Indian child outside of the applicable order of~~  
~~2 27 preference.~~

2 28 EXPLANATION

2 29 This bill relates to the Iowa Indian child welfare Act  
2 30 (Iowa ICWA) by amending provisions found to be  
2 31 unconstitutional by the Iowa supreme court. Under Code  
2 32 section 232B.2, the purpose of the Iowa ICWA is to clarify  
2 33 state policies and procedures regarding implementation of the  
2 34 federal Indian Child Welfare Act (federal ICWA), enacted in  
2 35 1978.

3 1 Code section 232B.3, defining the terms "Indian child" or  
3 2 "child", is amended to eliminate language that included a  
3 3 child who is under 18 years of age that an Indian tribe  
3 4 identifies as a child of the tribe's community. Under the  
3 5 ruling, In the Interest of A.W. and S.W., Minor Children, 741  
3 6 N.W.2d 793 (2007), the court found that the inclusion of the  
3 7 language being eliminated by the bill expanded the scope of  
3 8 the Iowa ICWA beyond the group of children addressed by the  
3 9 federal ICWA, violating the equal protection clause of the  
3 10 United States Constitution and the equality provision of  
3 11 Article I, section 6, of the Iowa Constitution.  
3 12 Code section 232B.9 provisions, relating to preferences for  
3 13 adoption and other permanent placement, or emergency removal,  
3 14 foster care, or preadoptive placement, of an Indian child, are  
3 15 amended to allow a good cause exception to the specified  
3 16 placement preferences. Language is eliminated that provides  
3 17 that the consideration of the preference of the Indian child  
3 18 or the parent or a parent's request for anonymity cannot be  
3 19 used as the basis for deviating from the order of placement  
3 20 otherwise specified in the Iowa ICWA unless there is clear and  
3 21 convincing evidence that using the order of placement would be  
3 22 harmful to the Indian child. Under the ruling, In the  
3 23 Interest of N.N.E., Minor Child, 725 N.W.2d 1 (2008), the  
3 24 court found that the federal ICWA allows the court to deviate  
3 25 for good cause from placement preferences and that the high  
3 26 burden in the Iowa ICWA to deviate from the placement  
3 27 preferences violates substantive due process rights. Although  
3 28 the facts addressed in the ruling applied to a voluntary  
3 29 termination of parental rights, the court noted that the  
3 30 placement preferences in the Iowa ICWA also apply to emergency  
3 31 removal, foster care, and preadoptive placements.

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